NATIONAL MUNICIPAL REVIEW

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VIEWS AND REVIEWS

I

FROM time to time when reformers get to musing together, somebody mentions the need of a state-wide militant civic association to which can be committed the task of pressing consistently and influentially for better conditions in the state government. The California Taxpayers' Association is the only one in the country and it is doing a beautiful job but from this distance it appears not to be rounded out by activity of the rank and file of the membership in conventions and committees which, in the long run, is essential to influence. In New York and Illinois there are those valuable associations which keep tabs on legislators and supply the public and the candidates with terse paragraphs of elaborately substantiated fact, but these are bureaus rather than associations and are largely prevented from lobbying for progressive measures by the necessity of irritating as candidates the very men they must cajole as legislators. Elsewhere there are state manufacturers associations and state chambers of commerce with some civic items in their programs but they, of course, cannot fill the bill although the New Jersey Chamber of Commerce comes pretty near it.

In Ohio and in New York the project of a state civic league has been in the minds of many for a long time but nothing tangible has yet been developed. In various states the National Municipal League has members enough to constitute a fairly satisfactory nucleus—ninety members in Illinois, for example—and some months ago the League's executive committee authorized the secretary to call them together with a view to organizing a state chapter that could urge the National Municipal League's line of reforms upon the constitutional convention; prospective change of secretaries, however, prevented action.

The difficulty of getting up state civic organizations is in the fact that the members are hopelessly scattered. Committees cannot meet. Quorums cannot be mustered. No matter where you locate the office and secretary the organization forthwith may be suspiciously tarred as being a "that-city bunch" and interest in other centers may jealously wane. A state association is much harder to organize than a city association.

But it can be done. And sooner or later such state associations must come. Their opportunities are immense and they are likely to achieve victories more easily than local reformers ever did.

II

THE practice of issuing separable Supplements with this magazine has gone far enough to prove its value

rather definitely already. Mr. Bassett's admirable contribution on "Zoning" in this issue is the fifth of these pamphlets. We print an over-run of each and carry a stock on hand for which there is usually a prompt and lively demand in singles and in quantities. Mr. Purdy's Supplement on "Assessment" is already in its third edition, paying for itself as it goes.

III

THE reformer and politician often represent two certain opposing types of humanity,—what Raymond Robins is fond of describing as the "indoor" and the "outdoor" minds.

Robins himself is an outdoor man; so is Hoover, so was Roosevelt,—a type that progresses most rapidly when called upon to deal with people. The outdoor type likes rough and ready methods and prefers to carry his office in his hat. Such a man is unhappy when dealing with scientific or abstract work on pieces of paper in a quiet office, or in dissecting a question of principle. He cannot read a bureau of municipal research report or install a system or stand by a precedent. To him the bureau is a flimsy camouflage for its principal financial supporter. To sell him an idea, the bureau director must tell it to him in slang.

The "indoor" man on the other hand hears you talk and then asks you to write it up for him as a report. He does his best thinking in solitude and would rather write it to you than argue it, *e. g.*, Woodrow Wilson. He excels in cold analysis and cannot reason until he has discovered a principle. To sell him an idea, convert it into a syllogism.

The reformer is generally an indoor man and the politician is always an outdoor man. For most of the jobs in the modern city hall, the indoor type is superior. But for a popular representative, the outdoor man is vastly better. Most of the lawyers who argue brilliantly at the legislative committee hearing would be positively illiterate if assigned to the job of getting votes at a truckmen's social club.

The outdoor mind understands better than does the indoor mind that the best basis for persuasion is sympathy. If you would convince a stranger, spend nine-tenths of your time showing him that you and he think the same way about everything, that you are mad about the very things that exasperate him, that you are, indeed, his kind of man, and when you have thus marketed *yourself* to him, you can easily sell him one of your ideas. But the indoor man cannot honestly do that. His discriminations are so positive that he has to disagree even where to concede would not impair his purpose. Intolerance to a certain extent goes with his intellectuality.

Moral: The indoor reformer who deals so expertly with abstract ideas should recognize that government is the art of handling human beings and that the outdoor man is an essential element in the structure.

IV

With this issue we absorb the SHORT BALLOT BULLETIN which for nearly ten years has been published bi-monthly by The National Short Ballot Organization.

When the NATIONAL MUNICIPAL REVIEW was made a monthly it became as prompt with Short Ballot news as the Bulletin and since then there has been little in the Bulletin which has not been covered also, and more fully, in the REVIEW.

Accordingly the April Short Ballot Bulletin is the last and in it the Short Ballot advocates are urged to subscribe to the REVIEW.

RICHARD S. CHILDS.

A CITY FOR SALE

BY VICTOR C. KITCHEN

Strange spectacles have followed in the wake of war and not the least of these is the sight of an entire city of 35,000 population, Nitro, West Virginia, offered for sale to the highest bidder. :: :: ::

I

In France the war has ruined many cities and razed them to the ground. But in America it has caused an entire city of 3,400 buildings to spring up and flourish on flat meadow land where no structure of any kind had stood before.

This city did not just "happen to grow" along cow path lines of least resistance, but was scientifically planned in advance, pipe for pipe, street for street, building for building, and then completely built as a unit by engineers of the United States government.

It was planned as a great industrial center for the economical production of war supplies and to augment the greatly overtaxed capacity of already existing factories. And it was planned to include the largest number of industrial advantages—a great industrial center by purpose—not by luck.

The site, for instance, was chosen at a point now known as Nitro, West Virginia—a point which represents the shortest average distance to the largest number of important cities and supply centers. And it was located on the banks of the Kanawha River in the heart of the Kanawha and New River coal mining regions, producing the finest steam and coking coal in the United States.

This region was also found to be rich in natural gas and other natural resources and climatically favorable to industrial activity.

With transportation charges and the cost of power thus reduced to a minimum and all other favorable factors determined in advance, the streets were laid, the factories built, workmen's cottages and executive residences were erected, lighted, wired, piped, heated and furnished, and stores, schools, a hospital, fire houses, police station, churches, theatres, hotels, dormitories, restaurants, recreation centers and municipal buildings sprang into being.

This "going" city, able to employ, house, feed, educate, entertain and protect a population of 35,000, was completed and occupied in a little less than one year. And the work began.

II

But scarcely had the wheels commenced to turn when the armistice put an end to hostilities and the need for Nitro as a government-owned property became extinct.

The entire city was then placed upon the market with its 729 completed manufacturing buildings, many of them fully equipped, piped, wired and provided with railroad sidings, with its twenty miles of streets and sidewalks, its two thousand cottages for laborers, its forty-nine miles of sanitary sewers, its colossal filtered water supply, its thirty-two miles of natural gas lines, its eighteen miles of broad gauge and twenty-five miles of narrow gauge communicating railways, its four-hundred-bed hospital and twenty-four-room school, its tremendous classification yards, its modern fire and police protection systems, its milk plant and its big department store, its store

blocks, clubs, Y. M. C. A. and moving picture theatres—all offered to a single purchaser.

The city was purchased as a whole by the Charleston Industrial Corporation of Nitro, West Virginia.

This corporation is taking advantage of the completed plants and factories, installed equipment, low power costs and other advantages, to develop Nitro as a great industrial center for manufacturers of peace time products.

Again the city has been placed upon the market—a city for sale—not as an entire city, this time, but in plant or sectional units, offered to manufacturers who seek a new plant location or branch factory site where the largest number of industrial advantages are concentrated, and where problems of construction, equipment, transportation, power supply and labor housing conditions have been already solved for them.

Aside from its technical industrial advantages, the city of Nitro offers an interesting study to municipal experts.

Its modern school, for instance, is entirely a ground floor structure, with every one of its twenty-four rooms opening directly outdoors. Its four-hundred-bed hospital comprises a group of twenty-seven separate buildings most modernly equipped and scientifically arranged.

Its filtered water supply with its million gallon sedimentation basin, pumping stations, filters and hill tanks is a model of modern engineering.

Its fire stations, fire fighting apparatus, complete Gamewell alarm system, high water pressure and sprinkled buildings, have earned for it the slogan of the "best protected city in the world."

Its municipal center, barracks, mess halls, kitchens, store blocks, ice plant, milk plant and its various types of workmen's cottages—all are models worthy of close study by municipal students and engineers.

Throughout, each section, unit and element of the city are carefully related to the central plan. Black and white elements of the population are segregated, for instance, and houses suited to various types of labor are located in the vicinity of the plants which require that type of labor.

The four store blocks are situated so that one of them, at least, may be easily reached from every section of the city. Recreation centers are provided at the most convenient locations.

Bus lines unite all points too distant for easy walking. Plants are tied together by a net work of intercommunication lines. And the manufacturing and residential areas are distinctly separated—the factories occupying the flat lands along the river bank, while the residences range back into the foothills.

III

Altogether it is strange to think of such a large, well planned and thriving city being offered as a "buy" to any single purchaser. It is the first complete and self-sufficient city in this country to "change" hands as an entity. It is a "war baby" abandoned by its mother and adopted by a modern business corporation for productive peace time enterprise. And it has proved to be a lusty child. The wheels of Nitro are beginning to turn again. Manufacturers were quick to recognize its unique advantages and are already "moving in" to the buildings so recently vacated by the toilers of war. The taking over of Nitro was begun but a few weeks ago. Its first peace time plant, taken over by a large foundry equipment manufacturer, went into active operation in April—giving immediate employment to several hundred workers.

THE NEW GERMAN CONSTITUTION

BY R. COGGESHALL
Harvard University

In the new republican constitution of Germany written at Weimar last year are to be found the initiative, referendum, recall, proportional representation and municipal home rule! All, however, being more or less Germanized. :: :: :: :: :: :: :: ::

I

THE constitution of the German *Reich* or commonwealth was framed by an elective constitutional convention which met at Weimar during the spring and early summer of 1919. It went into force on August 11 of that year. It is a relatively long document, about forty-eight pages in English translation and containing many interesting provisions, political, social, and economic.

The statesmen who assembled at Weimar in the summer of 1919 evidently wished the new German republic to stand beyond doubt as the supreme power in the nation. From Prussia they had learned a bitter lesson concerning the consequences of state domination. As a result they placed "exclusive" jurisdiction, or such supervisory jurisdiction as will easily become absolute, in the hands of the central authorities. The central government was given, in addition, practically unlimited taxing power, and a wide range of authority to guide the law-making authority of the states.

II

The position of the central government, or government of the commonwealth, in relation to the states having been defined, the national executive was the next problem. The president is to be "chosen by the whole German people" for a term of seven years. In the provision for a presidential "recall" the framers showed political acumen as well as enthusiasm for democracy. The national assembly, or lower house, may by a two-thirds vote ask the people to recall the president, but, if the people refuse to recall him, he starts a new seven year term and the assembly is dissolved. This will prevent a hostile legislature from acting without assurance of public support. The constitution expressly provides that all orders and directions of the national president require for their validity the countersignature of a minister. "By the countersignature responsibility is assumed." The English tradition of ministerial responsibility is thus crystalized into words. It is interesting to note that the cabinet "will make its decisions by a majority vote."

The national legislature is divided into two houses, the lower being known as the national assembly (Reichstag), the upper as the national council (Reichsrat). National laws, however, are not enacted by the two houses in concurrence, but by the assembly alone. The upper house may, nevertheless, object to a law, in which case the law may be referred to the people or dropped altogether. The latter step is the only form of veto provided in the constitution—suggestive of our "pocket veto." If, however, the lower house overrides the objection by a two-

thirds vote, the law is either referred to the people or promulgated within three months as the president may decide. The people may initiate a bill "if one-tenth of the qualified voters so petition." It is provided that the constitution may be amended by a two-thirds vote of both houses, or by a majority of all the qualified voters at a referendum.

Under the title of "Fundamental Rights . . . of Germans" the new German constitution contains a bill of rights. But these various rights are in almost every case seriously impaired by such phrasing as "exceptions are permissible only by authority of law." It is further provided that the president may suspend, "in whole or in part," the fundamental rights set forth in specified articles. Herein lies the explanation of a recent dispatch from Berlin: "Once more Germany is under martial law, this time by order of the president, who . . . has suspended all civic liberties."

Many provisions deal with education, the church, and the family. For instance, all private schools must be licensed and some types are forbidden altogether. The right of private property is guaranteed, as well as the right of inheritance in accordance with the civil law. The constitution sets up in article 165 an elaborate system of workers' councils ranging from small, local groups to a national economic council which has the right to recommend legislation to the national cabinet and assembly, sending advocates to plead in person before the national assembly. This paralleling of the political organization by an economic organization is perhaps the most significant provision of the document. The storming of the Reichstag some weeks ago was incident to the debate on the factory council's bill introduced by the national economic council.

Of particular interest to the readers of the NATIONAL MUNICIPAL REVIEW will be the specific references to municipalities. In article 17 it is provided that the principles of proportional representation shall apply also to municipal elections. A residence qualification may be imposed by a state law. In article 127, it is stated that "municipalities and unions of municipalities have the right of self-government within the limits of law"—a suggestion taken from recent municipal home-rule movements in this country. In the rather elaborate provisions relating to the schools the constitution stipulates that while "the entire school system is under the supervision of the state, it may grant a share therein to the municipalities."

An English translation of the whole document, with a historical introduction, has been prepared by Professors W. B. Munro and Arthur N. Holcombe of Harvard University. It is published by the World Peace Foundation, 40 Mount Vernon Street, Boston, from whom copies may be obtained on application.

THE OPERATION OF THE CITY-MANAGER PLAN IN WICHITA

BY A. A. LONG
University of Kansas

In our series of subjects of city-manager plan studies Wichita, Kansas, occupies an interesting place because it is the leading case of a city that has changed from the commission plan. :: :: :: ::

I

When the commission form of government, which operated from 1910 to 1917, failed to rid the city of political corruption and inefficient management, there arose in Wichita, Kansas, a demand for the city-manager plan. The recall of a commissioner and the election of a successor even less desirable than the man who had been recalled demonstrated conclusively that the control and operation of the municipal government had not been removed from the damaging influence of unscrupulous factions and groups. Even the workings of the commission itself were featured by wire-pulling and political chicanery.

In the face of this evidence, the people of Wichita, led by a few spirited citizens, determined to clean house. Accordingly, during the first months of 1917, a bill was prepared and presented to the state legislature—then in session—to permit Kansas cities to adopt the city-manager plan by engrafting it upon the old commission framework. The bill became a law, and Wichita was the first city to take advantage of the provisions of the act. At a special election held on the 9th day of March, 1917, 5,551 votes were cast for and 3,473 against the adoption of the manager plan.

Since the state law is somewhat vague in its terms granting to the city manager the right to appoint department heads, a supplemental ordinance was passed giving the city manager of Wichita full and complete power to appoint and discharge department heads.

II

At the first regular election under the provisions of the new law, Mr. L. W. Clapp, a prominent citizen, was chosen commissioner with a big plurality over any one of the four other commissioners elected, and he was immediately made mayor by the commission.

The first commission was made up of business men who were also leaders in the community, and well known for their success in private life.

Wichita was strongly influenced by the experience of Dayton with the city-manager plan, and this influence is reflected in the selection of a city manager. The Wichita board looked about for an engineer who could fill the position, probably because Mr. Waite was an engineer. The first regularly appointed city manager, Mr. L. R. Ash of Kansas City, Missouri, was chosen on his record as a successful construction engineer. He was employed at a salary of $10,000 a year.

The first act under the new régime was the overhauling of the city hall, which was a typical example of high ceilings and empty court chambers. It was converted into a modern office

building, giving almost twice as much floor space, and allowing for a much more practical arrangement of offices.

In like manner, a reorganization of the entire city administration followed. The police system was placed in charge of a chief from an out-of-state city—an appointment that furnished food for no little "home rule" talk. But the new chief gave the city its first effective police system, and the reorganization of the police force broke up the rendezvous of the gang element and undermined the power of the former political ring.

In fact, the old political assemblage was completely replaced by a working organization in which there was comparatively little lost motion.

Careful attention was given to the subject of public improvements during the incumbency of Mr. Ash. However, the details of the engineering problems were left almost entirely with the city engineer; and Mr. Ash himself merely consulted with the engineer on the more important matters and gave detailed advice on questions giving rise to dispute and litigation.

The construction of a big storm sewer was one of the things about which the opposition created a great deal of disturbance. Bids were advertised for on the sewer improvements to be installed, but no contractor's bid came within $100,000 of the city engineer's estimate. After a failure to close a contract, the city undertook to do the construction work on a cost-plus basis. The opposition attacked the legality of the proceeding; but the city won out on the question of legality, and at the same time saved the property owners $100,000 on the project.

Business methods marked the Ash administration from beginning to end. Mr. Ash himself was an untiring worker, and he was not given to courting public favor or giving extended consideration to a question for the sole purpose of soothing someone's feelings. His was a process of firing a series of questions at a complainant, securing the desired information, and then and there handing down a decision that was final. And it may be said to his credit that his decisions were usually correct, even though he often acted hastily.

However, if Mr. Ash had been more considerate of the feelings of the public, he doubtless would have left a much more favorable impression with a great number of people who did not understand his rapid fire methods and became incensed at what was considered an uncourteous attitude on the part of a public official. The people of Wichita, like other free Americans, were accustomed to dealing with the public official who is more concerned with his tenure of office than with the business-like discharge of his public duties. Yet, as a matter of fact, the people of Wichita are learning to appreciate their business-like government, and even many former stand-patters would be loathe to exchange the new order for the old.

III

The election of the spring of 1919 gave the opposition a chance to come back. Their first plea was that Wichita should choose a home man as city manager unless one could be secured who had had several years' experience in a similar position.

The opposition contended that surely the city could find enough "guns" within her own bounds of sufficient calibre to fill any position; for even the governor of the state had been selected from Wichita.

Another claim to the effect that labor should have a representative on the commission was heard. The labor

issue was probably originated by the "home rulers," but it was astutely placed in the hands of the labor organizations for nourishment.

The home rule element experienced difficulty in securing a candidate, especially a radical one, so they combined with the "laborites" and centered on one man who was designated the "labor candidate." He secured the highest number of votes, although he was not avowedly opposed to the old régime and afterwards proved himself to be a very congenial worker with the other commissioners. Mayor Clapp, who had supported the Ash administration at every turn, was given second to last place in the number of votes received in the election. Every commissioner, except one who was not a candidate, was re-elected.

The total number of votes cast in the election was small compared with the possible voting population; the small vote was largely due to the fact that the community leaders did not take the claims of the opposition seriously and were confident of an easy victory at the polls.

Upon the organization of the commission after the spring election of 1919, Mr. Clapp was re-elected mayor, and Mr. Ash was reappointed city manager.

Mr. Ash had tendered his resignation just before the election, but it was only after much urging and insistence on his part that the resignation was accepted on October 1, 1919, when Mr. Ash was finally relieved of his duties. Mr. Ash based his reason for resignation upon the ground that he could not financially afford to hold the position and give up his work in the private construction company of which he is a member.

For several months before the final resignation of Mr. Ash, the commission made every effort to secure a new city manager who was trained in the general field of municipal work. Engineering ability was not enumerated as one of the requirements for the position. After a rather lengthy search, during which the commission failed to find a suitable man at the salary offered, Mayor Clapp resigned to accept the position of city manager himself. Mr. Clapp voluntarily reduced his salary to $6,000, with the understanding that the remaining $4,000 which would have been his, be used in the employment of an assistant city manager at $3,000 a year, and in raising the salary of one of the department heads.

The new city manager is a graduate of one of our best eastern colleges. He is a man of mature years, and is experienced in matters of finance and big business. He is thoroughly versed in accounting and budget making; yet he is sufficiently liberal in training and views to appreciate the importance of every recognized field of municipal activity. He is deliberate, thorough, and well-balanced. He is accessible, genial, and courteous. Mr. Clapp has more time than his predecessor had for consideration of complaints and questions of policy; for the assistant manager, Mr. F. W. Sefton, is a master of the details connected with the operation of the office, and he is always at his post.

City Manager Clapp is a "home man" and has the direct interest of the city at heart. He is independently wealthy, and is actually assuming the responsibility of the managership chiefly for the purpose of promoting the welfare of the community.

There seems to be an understanding that Mr. Clapp will not continue as city manager indefinitely, but that as soon as some of the serious problems now confronting the city are cleared up, and a suitable successor can be found, he will give up the position.

IV

At the time of the adoption of the manager form of government in 1917, the city of Wichita was bonded in the sum of $1,400,000, and to-day its outstanding indebtedness is $1,300,000, notwithstanding an expenditure of a normal amount for public improvements, and of $200,000 for the construction of a new forum building. The tax rate has remained at the same figure of 7.8 mills since 1917, despite the general increase in operation costs. The valuation of taxable property has increased from $65,807,214 in 1917 to $88,764,934 in 1919.

The city of Wichita is confronted with some complex public-utility problems. Not a single public service is operated by the municipality. The gas situation is unsettled, and has been the source of much concern.

Five cents is still the price one pays for a street car ride in Wichita, and one also pays only five cents in a jitney or motor bus. The service of the two combined is fairly good compared with the present transportation accommodations in our American cities; yet the street railway problem is demanding more than passing consideration.

The water-works system is also coming in for its share of attention, and there is talk of a possible purchase of the water works by the city.

The publicity feature has had a very important bearing on the experience of Wichita with the city-manager plan. The administration has never, apparently, given the question of publicity the place of importance it deserves—a failing which is certainly not peculiar to the city of Wichita. It was the feeling of Mr. Ash that a great deal of noise made by the opposition would never have had a hearing if the real truth of the conduct of affairs had been known. At the same time there is no evidence that the administration made a special effort to furnish the local papers with news concerning the numerous accomplishments of the municipal government. As a result, a great deal of "hearsay" and "presumption" found space in the news columns. The general dissemination of information about the work of the city has been left almost entirely to the two daily newspapers. Evidently few chances to air the maladministration of affairs have been passed up by the reporters. The opposition certainly cannot ascribe its defeat to lack of publicity.

While the liberal policy of the papers in publishing notes on municipal affairs has served to keep up community interest at home, it has unfortunately created an erroneous impression in many quarters that the city manager experiment has been somewhat disappointing in the city of Wichita. Yet if we are to accept the audit of the substantial citizenship of the town, the experiment has proved very satisfactory.

The civic consciousness of the city of Wichita presents an unusual situation. The public has learned to think in its peculiar manner. Public thought runs at high tension, accentuated by the presence of a number of civic and commercial organizations working more or less independently. There is not, in Wichita, a central chamber of commerce, or any other one similar organization that can be said to represent the public spirit and civic body of Wichita as a whole. But the factionalism of the city is geographical rather than political. In a case involving a consequential public question, the well-directed civic and commercial agencies are wont to combine and tide the city over the emergency.

Wichita has grown rather rapidly during the past five years from a city of 53,582 in 1915 to a city of an estimated population of 70,000 in 1920. This

rapid growth has been due in a large part to the oil industry. There has always been a big transient population in the city, which fluctuates according to the oil development. Nevertheless, there seems to be a sufficient number of good substantial citizens to insure the continued stability of the municipal government, and the indications are that Wichita will henceforth enjoy a period of efficient administration in its public affairs.

BEHIND THE SCENES WITH FIVE STATE BUDGETS

BY B. E. ARTHUR

A budget system may be one thing in law and quite another in practice. The budget laws of all the states we described in the August, 1919, issue. This article tells with a surprising frankness how they work. :: ::

Budget System! Rather common phrase nowadays. One sees it almost daily in the newspapers. Congressmen, governors, legislators, mayors and housewives are talking about it. Mrs. Smith operates her household on the budget system. Numerous cities are using it. Seven-eighths of the states have adopted it. Congress is figuring on it.

Among the states three general types of budgetary procedure, differing mainly in the location of initial responsibility for the budget, have been developed. These are the "executive type," when the governor is responsible for the budget proposals; the "commission type," when a board composed of administrative, or administrative and legislative, officers is responsible for the budget recommendations; and the "legislative type," when the budget proposals originate in legislative committees. Advocates of budget reform throughout the country have generally agreed that the executive type is capable of operating more effectively than the other two types and is for this reason the farthest advance in budgetary procedure. In fact, one half of the states adopting budget methods have expressed a preference for the executive type and have incorporated procedure to that end in their budget amendments and laws.

In practice, however, the executive type of budget has in nearly every state either fallen far short of what it was intended to accomplish or has reverted to one of the other types.

Impossible, you may say!

But read the following episodes based upon the actual experiences of several of those states operating under the executive type of budget.

NEW JERSEY

About ten years ago a newspaper man came to Trenton as a member of the New Jersey legislature. It was his first venture in "politics," and he liked it. As a newspaper manager he was regarded a success, but he had a sneaking notion that he might be even more of a success as governor. However, to aspire to that office he must do something to distinguish himself among his "fellow citizens." The financial reports showed that an unsatisfactory condition existed in the state which

was gradually growing worse instead of better. Here was his opportunity to make a reputation; he would advocate the adoption of a budget system and other business methods. To this end he said much about regarding the governor as the state's "business manager," and proposed in 1916 a bill authorizing the governor to prepare and present the budget to the legislature. This bill was duly enacted into law.

The governor, then in office, belonged to the party in opposition to that of the sponsor of the budget law. His term of office did not expire until during the next regular session of the legislature following the one at which the budget law was enacted. In the meantime, the opportunity came to the champion of the budget system to become candidate for governor. He ran and was elected mainly upon the strength of having fathered budget reform in the state, although the scheme was yet untried.

As oftentimes happens in the best laid schemes, the budget law contained, perhaps inadvertently on the part of the author, a provision which worked practically the undoing of the whole project. The budget was to be prepared by the governor and presented to the legislature at the *beginning* of each regular session. That is, the outgoing administration was to make up the budget for the in-coming administration—the retiring governor was to prepare the budget for the new "business manager," the governor-elect. Although the old governor was without the necessary information properly to prepare the budget and did not care to perform the task in the closing days of his administration, he nevertheless did it mainly because it offered a splendid opportunity for him to concoct a pill for the opposing party and the new administration. He found certain satisfaction in showing up the much-lauded budget reform! When the governor-elect came into office he informed the legislature (in which his party was in the majority) that he objected to taking the financial prescription proposed by the retiring governor. The result was that the legislature discarded the old governor's proposals and prepared a bill authorizing expenditures in accord with the wishes of the majority party in the legislature. This bill the new governor approved. While admitting that the budget system did not work as effectively as it might have if the governor had been in agreement with the majority party of the legislature, he nevertheless regarded it as a great step forward in the state's financial procedure. Certainly the legislature could not be blamed for rejecting such recommendations as the retiring governor had made! Just wait until he had an opportunity to prepare the budget and then the people would see it work effectively!

In due season the opportunity came, but in the meantime new political aspirations had seized the attention of the "business-manager" governor. While the law required him to prepare and submit the budget to the legislature, he did not care to be solely responsible at that time for deciding several important issues in the spending program of the state. In his day dreams he saw the national capitol arise before him. He must not do anything, he must not make any financial recommendations that would keep him from realizing this dream! He must devise some means of shifting or diffusing the responsibility and at the same time of enabling him to present a budget to the legislature that would forestall any annoying criticisms on the part of that body. This was his scheme: he appointed a committee, composed of a few of the leading legislators who had served on the joint appropriations com-

mittee and who would be members of the next legislature. This committee, together with two administrative officers appointed by the legislature, sat with him in the review of the estimates and assisted him in the preparation of the budget. The budget recommendations, as submitted to the legislature, were the result of a compromise of opinions and interests. When the budget was presented to the legislature it was referred to the joint appropriations committee, the most influential members of which had concurred with the governor in the financial recommendations which it contained. Only a few changes were made in the proposed appropriations; all interests had apparently been satisfied in the making up of the budget. There was no discussion or criticism of the budget plan in the legislature. None seemed necessary; the possibility of criticism had been practically eliminated by previous agreement. The budget was adopted by the legislature as it had been proposed. Forthwith the governor proclaimed it a great triumph for the "executive budget" principle. The sequel was the early realization of his dream—a seat in one of the marble halls of the national capitol. And so "men rise on stepping stones of *budget systems* to higher things."

For New Jersey the executive type of budget has reverted to the commission type in which members, or representatives, of the legislature control the preparation of the budget. Responsibility for the budget plan is not fixed. The legislative practices and procedure remain practically the same as before the adoption of the budget law.

MARYLAND

In 1915 Maryland had a million-dollar deficit in her treasury brought about mainly through the uncontrolled action of the legislature in passing appropriation measures. A commission was appointed to study the financial situation, and after investigation recommended the adoption of a budget system. As a result of this recommendation a budgetary procedure was written into the constitution,—Maryland being the first state in the Union to make such procedure a part of its organic law. Under the provisions of this amendment the governor is required to prepare the budget and to embody his proposals for appropriations in a bill. When these documents are submitted to the legislature it must act upon the governor's bill before considering any other appropriation measures. It can only strike out or reduce items in the governor's bill, and cannot initiate appropriation measures except they are limited to a single object and carry the revenue to meet the proposed expenditure. The governor is permitted with the consent of the legislature to amend or supplement his bill after it has been submitted to that body.

How did this procedure work out? When it came to preparing the first budget the governor was in a quandary; he was without adequate information or necessary help to prepare the budget. The administrative organization was so decentralized as to place him in a position where he had practically no control over the sources of budget information. No provisions had been made for a staff or even for the employment of a single budget assistant. Fortunately, the governor was not without experience in the financial affairs of the state government, since he had been comptroller preceding his election as governor. In casting about for help to put the budget documents in shape for the legislature, he was able to engage the services of a single person who began assisting him about six

weeks prior to the date set by the constitution for submitting the budget to the legislature. During this time the estimates were gathered, hearings were held, the estimate data were checked up, the budget was compiled, and the bill containing the governor's expenditure recommendations was prepared. The information upon which the budget recommendations were based was not only unsatisfactory owing to its meagerness, but in a number of instances was inaccurate and even misleading; and there was no time to check it up by field investigations. As the day drew nearer for the presentation of the budget to the legislature, there was an increasing evidence of feverish haste in the executive office. Finally, the completed documents went to the printer about forty-eight hours before they were due to be presented to the legislature. It was impossible to print them in that length of time, so the legislature rather reluctantly agreed to extend the time for submission one week. The governor heaved a sigh of relief! At the end of this extended period the budget documents were printed and submitted to the presiding officer of each house who referred them to the appropriation committees.

As in preceding years numerous requests for appropriations were filed with the appropriation committees. Many of these the committees felt should be allowed. But how were they to do it? Each item would require a special act which must carry the revenue to meet it, unless provision could be made to include it in the governor's bill. To pass a lot of small appropriation bills each imposing a fraction of a mill tax upon the property of the state would embarrass the members of the legislature. These items must be included, if possible, in the governor's bill! The committees could not increase or add new items to this bill, but the governor had the power to amend it. This offered a solution; so they confronted the governor with the matter. They told him that his estimate of the anticipated revenues was conservative and that he might easily increase his proposed expenditures.

To add to the governor's embarrassment some of the independent departments and agencies of the administration, not being satisfied with his budget allowances, went over his head and laid their complaints before the members of the appropriation committees. What could the governor do? He did not have the authority to forbid such action. As is to be expected, these departments and agencies found supporters in the legislature who demanded of the governor that he revise their budget allowances. Since he needed the political support of these members of the legislature he yielded to their demands and amended his budget recommendations by submitting two supplementary budgets to the legislature. Thereupon the legislature passed the governor's bill. It was satisfied with the bill, since he had met its demands and at the same time saved it the embarrassment of having to resort to the passage of supplementary appropriation bills which would have imposed additional taxes on the people.

But this was not all. There were a few bills appropriating for local purposes which needed to be taken care of. Again the legislature did not propose to levy special taxes for these purposes. So a ruling was secured from the attorney general to the effect that there would be no violation of the budget amendment if such appropriations were paid out of the balance in the general fund remaining in the treasury at the beginning of the period covered by the governor's budget. In this way these bills were met without the laying of special taxes. Just what

expedients the legislature may use in the future in getting around this constitutional restriction remains to be seen.

But our story does not end here. Why should it? Is not the carrying into effect of a financial plan as important, if not more important, than the making of it? The money appropriated must be expended for services and supplies, and these must be made to achieve results if the budget plan is to be carried out. Undoubtedly the governor is the one individual to have supervising control over the execution of the plan. While the Maryland budget amendment requires the governor to prepare the spending plan, it does not place him in any better position than he was before the adoption of the amendment for effectively carrying out this plan. The administration is in the same chaotic condition, and administrative authority is by no means centralized in the governor. He is still merely one of a number of governors, each one directing work and making expenditures independently of the other. There is no central administrative agency to check up the results and thereby currently to gather the information needed in the preparation of the budget. In short, the expenditure procedure remains the same as before the budget system was adopted; contracts are let, purchases are made, services are employed as before without any central supervision or control.

When the governor got his budget recommendations approved by the legislature he went back to the routine work of his office as though all budget problems had been settled until the next session of the legislature came around. He concerned himself very little with expenditures outside of his own office. It was left to the comptroller's office to exercise control over the expenditures of the numerous administrative agencies by a sort of post-mortem examination. The character of services rendered, the quality of supplies procured, the results finally achieved were never taken into consideration; only the question of whether or not the expenditures had been made in accordance with the provisions of the appropriation act was considered. The governor's office made no attempt to gather information with reference to the expenditures, the revenues and the work of the various state agencies to be used in the preparation of the next budget. In fact, it was not equipped for this purpose. Furthermore, the governor did not expect to succeed himself in office; the next budget would be prepared by his successor. Why should he trouble himself to gather budget information for the next governor? If the legislature expected him continuously to bring together information to be used in preparing the budget, it should have provided him with a staff. The new governor would have thirty days after his inauguration in which to prepare the budget; he could "dig up" the information he needed during this time.

In due time the new governor was elected. Again it was fortunate for the state that a man was chosen for this office who had previously filled an important state office and who knew considerably about the financial needs of the government. Had he come up "green and untutored" from an agrarian section of the state, as sometimes happens in the choice of a governor, it would have been an absurd situation—a month in which to prepare the budget without any knowledge of the subject, without the necessary information and without the proper assistance! Of little avail under such circumstances would be the most profound knowledge of the propensities of a gray mule or the habits of a summer squash! The

new governor was inaugurated the week after the legislature met in regular session. He had thirty days under the provision of the budget amendment in which to prepare the budget and present it to the legislature. Immediately he put his clerks to ransacking the executive office records, but they were found to be almost as devoid of budget information as Mother Hubbard's cupboard of canine provisions. A few estimates were coming in each day from the various spending agencies. With the meager information contained on the estimate sheets and with the help of his office force, or whatever temporary assistance he might be able to secure, he was required to prepare within thirty days the state budget covering a period of two years and involving a total expenditure of almost twenty-eight million dollars! Almost an impossible situation to be in, but he did it and did it creditably well. Under the same circumstances perhaps nine governors in ten would have failed.

Obviously, several things are needed to make the Maryland budgetary procedure work effectively. To enable the governor to prepare the budget he should have a permanent staff working under his direction and engaged in gathering budget information throughout the year. In budget making, future needs are determined largely upon the basis of past experience. The administrative organization should be changed so as to centralize executive control in the governor; without this the governor is not the real executive of the state and cannot speak to the legislature as the final authority on budget matters. As long as the state government is composed of a hundred more or less independent units and agencies, each practically free to importune the legislature for appropriations, some way will be found to grant their requests although the power to initiate appropriation bills drawing directly upon present or anticipated funds of the state treasury may be denied to the legislature. Anyhow, the legislature cannot be completely deprived of its power to determine policy; and so long as it enjoys the exercise of this power it can enact laws that will involve the expenditure of money without any direct appropriations being made. The effect is the same. What is needed is control established through responsible channels, and this control should be brought about by positive rather than by negative action.

OHIO

The Ohio budget law, enacted in 1913, requires the governor to present the budget to the legislature. The governor has a budget commissioner, employed the year around to assist him in the preparation of the budget. So far, very good, but for constitutional reasons the budget law does not prescribe any procedure to be followed by the legislature in handling the governor's budget. Naturally, the legislature employs the same procedure that it used before the adoption of the budget methods.

What happens to the governor's budget when it is submitted to the legislature and how does that body consider it? There is an appropriation committee in each house to which the governor's budget is referred when it is submitted. Besides the appropriation committees, there are two committees in each house concerned with the raising of revenues and the settling of claims. These six committees, acting independently of each other, are charged with the consideration of the complete expenditure and revenue programs of the state. Each proceeds to report out bills and to make

recommendations to their respective houses without co-operation and with very little knowledge of what the others are doing.

The personnel and work of one of the appropriation committees of a recent session is interesting. It was composed of fifteen members, three of whom had been members of the committee during the preceding session of the legislature. By profession there was a veterinarian, a farmer, a florist, two lawyers, an apiarist, a merchant, a pharmacist, a real estate agent, a broker, an insurance agent, an automobile dealer, an electrician, a dentist, and a dog fancier. How eminently fitted by experience and general qualifications for the work in hand! This committee was to determine for the next fiscal period, and perhaps for many years beyond that, the expenditure policy of the state. So with a show of gravity it proceeded to the task set before it. The "horse doctor" was made chairman of the committee. He instructed the committee's clerk to inform the institutions over the state that the august body—the appropriations and finance committee of the house—was about to make its usual round of visits to determine appropriation needs. An itinerary of the junket was carefully made out, the time allotted to the inspection of each institution depending largely upon its past reputation for serving refreshments. The quality of the reception—fatted calf, Havana cigars, and good stories—usually indicated the extent to which the institutional head thought he ought to have an increase in his appropriations. Perhaps the institutional head did not care to present his claims in this manner, but he must "do as Rome does." If the committee spent two and one-half hours at an institution, it would put in two hours eating, smoking and telling yarns, and the remaining half hour looking around the plant. Thirty minutes each biennium spent in surveying the expenditure needs of a million dollar institution by a committee of such eminent qualifications! The junkets concluded, the committee returned to the capitol and held a few hearings at which certain individuals appeared who did not think they had been treated fairly by the governor in making his budget allowances. A general appropriation bill was then drafted embodying such of the governor's recommendations as the committee saw fit to include and whatever other expenditures seemed necessary as a matter of political expediency. This bill was introduced during the final week of the legislative session; it was jammed through the house without any debate and sent to the senate. Here it was referred to the senate finance committee, which looked over it with a critical eye and not finding provisions for appropriations to some of the things deemed "necessary to the welfare of the state" proceeded to amend it. The bill was reported out and passed the senate with amendments. Thereupon it was sent back to the house which refused to concur in the amendments. Something had to be done immediately, as it was the last day of the session. A conference committee was appointed and after a hasty session the bill was revised to include practically all of the claims of both appropriation committees. In this form it was accepted by both houses of the legislature just as the hands of the clock approached the hour set for final adjournment.

During the last week of the legislative session a score of bills carrying special appropriations amounting to several millions were passed by the legislature. These, together with the general appropriation bill, and a sundry claims bill were sent to the gov-

ernor. Nobody knew what the total appropriations would be until the governor had approved all bills, which he did not have to do until ten days after the adjournment of the legislature. Yet the taxation committees of the two houses prepared measures designed to raise revenues to meet expenditures the total of which was unknown at the time the revenue measures were passed by the legislature.

What was the result? The budget plan of the governor was destroyed by the independent action of the six committees and the archaic and unbusinesslike procedure of the legislature. Obviously, if the bicameral system is to be continued in our state legislatures, there ought to be a joint committee of the two houses which would be charged with the consideration of both revenues and expenditure needs, and this committee ought to be composed of men who have had some experience in financial matters—who are not merely dog trainers or horse doctors. The procedure of the legislature should be such as to insure publicity in financial matters and the orderly handling of all revenue and appropriation measures. Finally, the administration ought to be so organized as to give the governor control over the agencies expending the appropriations that he may be able to carry out the budget program.

MASSACHUSETTS

The people of Massachusetts, after a hard-fought struggle for improved financial methods and procedure, adopted in 1918 a constitutional amendment providing a budgetary procedure which was designed to place squarely upon the governor the responsibility for the preparation and initiation of the budget. The administration was reorganized with a view to giving the governor fuller control over it, and the governor was furnished with a staff agency to assist him in the preparation of the budget. It seemed that everything had been provided to insure the effective working out of the budget system. That extravagant and irresponsible body—the legislature—was no longer to be in a position to squander the people's money! The governor, responsible directly to the people, would make up the budget plan and the legislature would O. K. it. Very fine; but listen how the system actually worked out.

The governor gave very little time or attention to the preparation of the financial plan. One clerk of his staff agency was responsible for all the details and most of the policies of the plan. The statement, or message, explaining the 1920 budget was not even written by the governor. He merely wrote a prefatory note of a dozen lines in which his only positive recommendation was that the state tax should not be made to exceed a certain amount. In order that it might not exceed this amount the budget carried a recommendation to divert certain funds in the state treasury, which had originally been raised by bond issues for capital purposes, to the payment of current expenses. Anything to "get by" without facing the actual situation and the inevitable increase in the state tax burden! Why? Because of the popular feelings on the subject and the effect this would have upon the political future of the governor. The confidence of the people in his administration must be retained, and the easiest way out was for him to "pass the buck" to the legislature. This he did; and for once the "discredited and extravagant" legislature arose to the occasion, for once it became the "watch dog" of the treasury. It demanded of the governor why he indorsed such budget recommendations. The story got into the newspapers and

editorials were written on the budget proposals of the governor. At length the attorney-general decided that the governor's proposal to increase the state's revenue accruing to the general fund by diverting certain other funds was illegal under the provisions of the constitution. The governor was forced into the corner and compelled to submit a revision of his budget to the legislature. While this document met most of the criticisms of the legislature, it is clear that the governor did not assume leadership, but left the determination of the budget program largely in the hands of the legislature.

How to remedy such a situation, as the above, without merely enduring it to the end of the governor's term is a nice little problem for speculation on the part of the advocates of the "executive budget."

VIRGINIA

In all states the governor is known as the "chief executive," a term which implies full power and authority to control the administrative organization. But in no state is this meaning of the term true. It seems absurd to try to fix responsibility upon the governor for budget-making and for carrying out the financial program when his position is such that he cannot control the organization with which he has to do the work.

The administrative branch of the Virginia state government may be taken as an example of the decentralized and irresponsible organization over which the governor is supposed to exercise supreme executive authority. The governor is elected by the people for a term of four years. The lieutenant governor, secretary of the commonwealth, state treasurer, attorney general, superintendent of public instruction, and commissioner of agriculture are also elected for terms equal to that of the governor. They are practically co-ordinate in power with the governor since they derive their authority from the same source—the people. The auditor of public accounts is elected by a joint vote of the two houses of the legislature for a term of four years. The governor with the approval of the senate appoints a commissioner of state hospitals. Then there is the state board of education, composed of the governor, attorney general, superintendent of public instruction and three members selected by the senate every four years; the board of agriculture and immigration, consisting of one member from each congressional district appointed by the governor with the senate's approval for four years and the president of the Virginia Polytechnic Institute ex officio; the state corporation commission, composed of three members appointed by the governor with the confirmation of the joint houses of the legislature for overlapping terms of six years each; the board of directors of the state penitentiary, etc., consisting of five members appointed by the governor with the senate's approval for overlapping terms of five years each; a board of directors for *each* state hospital made up of three members appointed by the governor with the approval of the senate for overlapping terms of six years; and a general board of directors composed of all of the hospital boards of directors which appoints a superintendent of each hospital. All of the foregoing officers and boards are provided for in the state constitution. Then there are almost a hundred statutory offices, boards, commissions, departments, bureaus and other agencies. The controlling officers of these are in only a few cases wholly responsible to the governor either for their appointment to office or for the conduct of their

work. The governor has only a very limited power to remove administrative officers. Not only are the administrative agencies widely scattered, but the main functions of government are not co-ordinated. There is much duplication of effort and overlapping of work.

Recently a committee on economy and efficiency was appointed and made a survey of the state government. It reported "general disability" of the government due to chaotic administrative organization, decentralized accounting methods, existence of fee system, and lack of civil service and centralized purchasing. Then it recommended the adoption of a budget system as the remedy. The plan it proposed, in which the governor would be responsible for preparing and submitting the budget to the legislature, was adopted. No definite move has since been made to reorganize the government. Apparently an executive budget system is expected to work under such conditions as now exist in Virginia! Even if the governor were placed in a position to control such a ramshackle administration, he would not be able to secure anything like the proper service from its operation. The working of such a governmental machine will defeat the purposes of any system of budget control no matter how well it may have been devised.

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What are the general conclusions? An effective budgetary procedure does not result automatically from the mere passage of a law or a constitutional amendment providing for the establishment of such procedure. It is a process depending for its success upon the organization, relationship, personnel and practices of the different units and branches of government. An efficient state budget system cannot be developed in a month or a year, but it is a matter of evolutionary changes in governmental organization, habits and methods. Such a system requires that the state administration be reorganized so as to centralize executive authority and responsibility in the governor; that the committee organization and the procedure of the legislature be changed so as to provide for open consideration and criticism of the budget plan as a whole; and that modern business methods and practices be adopted in the purchase of services and supplies and in the audit and control of expenditures.

THE EXPULSION OF THE SOCIALIST ASSEMBLYMEN AT ALBANY

BY H. W. DODDS

Secretary, National Municipal League

Our new secretary happens to be the leading American authority on legislative procedure. :: :: :: :: :: :: ::

REPRESENTATIVE GOVERNMENT AT ALBANY

It is commonly accepted that violence settles nothing and that the progress of a man has been marked by the substitution of reason for force. Accordingly the development of the state supplanted self-help and private vengeance with a political and judicial machinery for settling civil difficulties. Traces of the ancient blood-feud survive only in modern lynch law, which meets general disapproval. The prime function of early government was to keep the peace and methods were secondary. Clearly at that period government was the dictatorship of a minority. Developing political instincts, however, have given us representative government on a democratic basis. It is true that some deny the democratic nature of modern government, insisting that what we have in fact is a dictatorship of capitalists. To this they would oppose the dictatorship of the proletariat, a return to force and lynch law, to the dictatorship of a minority. But there are other ways of exercising force than by naked violence. All coercion is not physical. For example, those in control of government for the time being, may use the instruments of government as veiled force to serve their own ends. Take the case of John Wilkes. Here was an effort to meet an issue by force.

THE FAMOUS CASE OF JOHN WILKES

George III was determined in his narrow-minded way to exalt the kingly office. By threats, patronage and manipulation of elections he was enabled to subdue Parliament. The subservience of Parliament caused wide discontent and some riots, and the king's ministers therefore began to assert the supremacy of Parliament against the nation. But the newspaper was coming into influence and the rising press became the court of appeal from a usurping Parliament. John Wilkes, although a member of the House of Commons, made his paper a leader in violent attacks on the secrecy of the proceedings of Parliament. He stoutly maintained the responsibility of members to the country and the right of a free press to publish and criticize their actions. For this he was thrown into jail in 1763 on the charge of seditious libel of the king's ministers, but he was released under the immunity of a member of Parliament. That body, however, under the spur of the king's vengeance, branded Wilkes guilty of seditious libel and denied that the privileges of members extended to this offense. Ordered to appear before the House, he fled to Paris, whereupon the House expelled him.

The popular resentment was great and "Wilkes and Liberty" became the cry. Five years later he returned and

was elected again to Parliament. Upon the demand of the king he was again expelled on the old charge. It cannot be doubted that the House of Commons had the legal power to expel members for offense, but seditious libel was a charge cognizable by courts of law. Accordingly the people believed that Wilkes should have been tried by the courts and if guilty punished, but that the action of the House denied him fair trial and was therefore unjust and oppressive. So Wilkes was again elected and again expelled. Declared incapable of being elected, he was immediately elected for the fourth time and had now become the people's idol. Under such great pressure Parliament was compelled to yield to the right of popular criticism. Wilkes was again elected to the House in 1774 and was admitted. In 1782 the House declared void his earlier expulsion as being "subversive of the rights of the whole body of electors." To this day the resolution of 1782 stands as a warning against abuse of power by a vindictive body, and the precedent is well established in England that conviction for crime in the courts must precede expulsion by the House on criminal charges. Naturally enough, Wilkes, never an able man, being no longer a martyr, dropped into obscurity, but Parliament's trial of force had failed, and republican government emerged from the conflict.

JANUARY 7 AT ALBANY

A "trial" has been concluded in Albany which will test severely American theories of representative government, and the outcome cannot help but have a definite bearing upon our ability to work out present problems by political means. On January seventh, after the house had been organized and the officers elected, the speaker of the New York Assembly suddenly and without warning ordered the sergeant-at-arms to conduct the five Socialist members to the bar of the assembly. The speaker then read an address in which he charged them with belonging to a party disloyal to our government and having been elected on a "platform that is absolutely inimical to the best interests of the state of New York and of the United States." The men were then allowed to return to their seats, whereupon the majority floor leader introduced a resolution, couched in strong language, asserting that by their membership in the Socialist party of America they had opposed the organized government of the United States, and asking that the matter of their exclusion from the Assembly be referred to the judiciary committee thereafter to be appointed by the speaker. The resolution was accepted as privileged and at once adopted without opportunity for debate. Members who voted in the affirmative criticized later the precipitous procedure which did not permit them to acquaint themselves with the circumstances. After the passage of the resolution the speaker ordered the sergeant-at-arms to conduct the five members out of the Assembly. To them the ceremony was unnecessarily humiliating and was obviously designed to impress all present with their guilt.

THE TRIAL BEFORE THE COMMITTEE

At the beginning of the hearings the chairman of the judiciary committee announced that the defendants would be given a fair trial under the rules of the supreme court of New York. Counsel made clear, however, that in the opinion of the committee the five assemblymen were there "as a matter of grace." "These gentlemen," he stated, "are entitled to no representa-

tion, and this committee itself could go ahead in secret and take testimony and report to the House and upon that report expulsion could be had and no one could complain." "There is no court," he continued, "that can question the Assembly's power or criticize its motives. For the defense to complain that their case was being tried by a committee appointed by the speaker who had instituted the proceedings, that the committee was acting as accuser, judge, and jury, and that the trial could not be fair because of the previously expressed bias of the chairman and committee, was to deny the inherent power of the legislature to pass on the qualifications and eligibility of members." In other words the orderly, due process of law by which guilt and liability are usually determined is not binding upon the legislature. Historic, time honored principles of Anglo-Saxon fairness may be disregarded with immunity.

The trial reached its end in March. Some arbitrary rulings on procedure were made by the chairman and much testimony admitted on the subject of socialism, bolshevism, religion, the family, private property, et cetera, which would have been ruled out in a court as hearsay, irrelevant and incompetent. Pleadings were never really joined. The defense was denied the right to make certain admissions in order to narrow the issues; and the obvious conclusion must be that the purpose of the committee was to leave open to witnesses the wide fields of religion, politics and economics in an effort to arouse popular indignation against the doctrine of the socialist members. The original resolution of the Assembly as well as the charges prepared by the committee as the basis of action were general and indefinite and not accompanied by specifications such as would enable the defense to prepare an answer. It was generally understood around the capitol that this was a drive on socialism which was good politics at present and it was in this atmosphere that all discussions about the church, the family, property, were carried on.

At the end of March, just late enough so that there could not be a new election to fill the vacancies, the committee reported in favor of expulsion and despite a vigorous opposition, led by young Theodore Roosevelt and others, the five Socialists were expelled by a large bi-partisan majority. By waiting until this date the question contingent upon the re-election of the same men was avoided.

THE LEGALITY OF IT

Regarding the legal competence of the legislature, the committee was absolutely right. The power to judge of the eligibility of members is a legislative privilege the exercise of which no court will review, no matter how arbitrary or unjust the action. As far as legal responsibility is concerned the committee could conduct their proceedings in secret under any rules of their choosing. Yet the recent hearings, biased as they were, were a great improvement over the methods followed in contested election cases in some of the trials of qualifications of members of congress. In these matters of prerogative the legislative bodies are a law unto themselves. The principle is that the legislature in the exercise of its necessary functions must be free from control by any outside department of government. It is responsible to the people alone. It is not strange that a soverign body should occasionally become arrogant in the use of summary power and deny the binding force of due process in judicial proceedings, but the courts have consist-

ently refused to share in the decision of questions of privilege. Historically this is a very ancient doctrine. In the early days the House of Commons maintained its dignity with difficulty. The king tried to keep it a mere ratifying body and to this end his ministers and judges sought to determine the discussions and membership of the House. Privileges such as freedom of speech in Parliament and uncontrolled election of members came only after hard fights. Against the royal prerogative was levied the "Ancient Privilege of the Commons." It was a real victory for representative government when Parliament proclaimed that the judges of James I could not exclude Sir Francis Goodwin, having been regularly elected. It is one of the curious developments of history that a principle employed to protect the representatives of the people against coercion and intimidation by an autocratic power should to-day remove them from all legal liability in contesting the expressed will of the voters.

But is it not possible that this power of legislative self protection in the hands of a majority may be turned against the very fundamentals of representative government? Inflated with a sense of power, the majority may use its legal prerogative to eliminate an unwelcome minority. This is one method of "direct action." James I had the idea. "None," he said, "shall presume henceforth to meddle with anything concerning our government or deep matters of state." And surely his Lord keeper could not have been thinking of the speaker of the New York assembly when he addressed Parliament: "His Majesty's pleasure is that if you perceive any idle heads that will not strike to hazard their own estates, which will meddle with reforming the church and transforming the commonwealth and do exhibit any bills to such purpose, that you receive them not until they be viewed and considered by those who it is fitter should consider of such things and can better judge of them."

TRYING THE SOCIALIST PARTY

In accordance with the expressed purpose of the judiciary committee, the doctrines of socialism have been given a thorough airing. Although the complaint charged that the Socialist party was a conspiracy to overthrow our government, counsel for the Assembly specifically repudiated the theory that it was incumbent upon a legislative body to await the judgment of the criminal courts before action on its part. For this there is good precedent in congress. The resolution which instituted the proceedings recounts that the Socialist party of America has declared its solidarity with the Soviets of Russia and is thereby pledged to the forcible overthrow of all organized governments now existing; and that members of the party agree to be guided by its constitution and platform and when elected to public office are liable to expulsion for failure to carry out the instruction of the dues paying party organization given by an executive committee made up in whole or in part of aliens. The resolution further accuses the party of disloyalty in the war and inaccurately concludes that as an organization it was convicted of violation of the espionage act. It was, therefore, resolved that members of this party be denied seats in the Assembly pending investigation. In opening the hearings before the judiciary committee, the chairman somewhat amplified these charges. "The Socialist party," he said, "proposes to substitute minority for majority rule by force if necessary. The five members in ques-

tion personally opposed the successful conduct of the war and gave aid and comfort to the enemy." They are accused also of being engaged with others in a conspiracy "to subvert the due administration of law and to destroy the right to hold and own property honestly acquired, to weaken the family tie which they count is the seed of capitalism, to destroy the influence of the church and to overturn the whole fabric of a constitutional form of government." The catalog is nothing if not complete. Some of the counts could be made the basis of criminal charges. The others were considered relevant because in excluding persons as lacking the qualifications of members it is not necessary to prove criminal conduct. The specific statements of counsel for the committee, as well as the nature of the testimony, reveal that the investigation was intended to touch upon the loyalty of the Socialist party to our form of government and their purpose to overthrow it by parliamentary means if not by violence. The real issue at Albany was whether members of a party which avows a purpose to do all in its power by lawful means to bring about a fundamental change in our economic order are to be disqualified from membership in American representative assemblies. If this question be decided in the negative, the accepted American tradition, that the proper place to attack undesirable party principles is at the polls and that the decision of the ballot shall be final, is destroyed.

THE CONDITION OF SOCIALISM IN AMERICA

It is only natural that many people should be intensely suspicious of the present Socialist party. Its members have passed resolutions and made statements which have been considered inflammatory and seditious. Although the leaders may have in mind a program of evolution, there has been considerable talk about "revolution" and "mass action," and some talk about "bullets." The customary phraseology of so-called scientific socialism, familiar to all students of the subject, suggests the Terror to many normal citizens. For the popular confusion between the program of evolutionary socialism and that offered by the disciples of violence and terror, the leaders of the present Socialist party are much to blame. Sound political judgment would have served them better.

It is generally understood that the present Socialist party is more radical than it was before the war. Following the adoption of the anti-war resolution at the convention in St. Louis, in 1917, the party was deserted by a number of influential names, leaving control to what had formerly been the left wing. This resolution proclaimed the party's "unalterable opposition to the war just declared by the government of the United States," and called upon "the workers of all countries to refuse support to their governments in their wars." The next convention of the party was not held until August, 1919, at which time the pro-war Socialists were read out of the party. "We unreservedly reject," reads the manifesto of 1919, "the policy of those Socialists who supported their belligerent capitalist governments on the plea of 'national defense' and who entered into demoralizing compacts for so-called civil peace with the exploiters of labor during the war and continued a political alliance with them after the war." The party on this occasion repudiated the recent Berne conference, at which the moderates tried to revive the Second International, and called for a reconstituted international open to

the Communists of Russia and Germany but closed to those who had co-operated with bourgeois parties during the war. The minority report of the committee on international relations recommended that the Socialist party join the Third (Moscow) International which met in March, 1919, under the auspices of the Russian Communist party.

The matter of the American party's allegiance to the Third International at present awaits the referendum vote of the rank and file. To date it has not joined the Third International, although the Assembly committee claimed that by expressing solidarity with the Russian Soviet Republic they had in fact ratified the manifesto of the Third International. Beyond a doubt in the mind of the writer, the Socialist party spiritually inclines to the principles enunciated by the Moscow International, which repudiated the "narrow-mindedness, opportunism and revolutionary impotence" of those moderate leaders who are trying to reconstruct international socialism along pre-war lines. Many orthodox Socialists believe that the Third International renounced parliamentary activity although this is denied by some present officials of the party. Its manifesto, however, did introduce a new term, namely the dictatorship of the proletariat. The proletarian state, it asserts, is like every state an organ of suppression but after the opposition of the bourgeoisie is broken, it is gradually absorbed into the working groups; the proletarian dictatorship then disappears and finally the state dies and there is no more class distinction. This is the philosophy of syndicalism and the American socialism of to-day has been strongly influenced by it. The leaders seem to accept the general strike as a political weapon, but it is doubtful if a single person of influence in the party approves the more violent methods of syndicalism or accepts other means than political action.

THE LEFT

But there are parties in the United States which do advocate violence and bloody war. American socialism has recently undergone a schism with the result that two groups have broken off from the parent party and have formed the Communist party, composed largely of the seven Slavic federations which had helped to make up the older party, and the Communist Labor party respectively. These last two hold frankly to an ultra-revolutionary platform including the dictatorship of the proletariat. They also eagerly accepted the pronouncements of the Moscow International. The platforms of both assert that the class struggle is essentially a political struggle, but ultimate hope seems to rest in the "mass strike," the use of parliamentarism being "only of secondary importance."

Yet when all is said and done there remains a fundamental difference between the Socialists and the Communists. The Socialist party yet accepts parliamentary action as the effective and desirable means of waging the class struggle, while the Communists have repudiated political methods in favor of the dictatorship of the proletariat. In the number of dues paying members, the two Communist parties exceed the Socialist party; and it must be clear to all that if the elected representatives of the latter are denied seats in our legislatures, the Socialists will desert to the Communists who are bent upon duplicating in the United States recent Russian experience. The New York Assembly, in company with large groups of citizens, has confused the programs of the two parties.

CAN THE LEGISLATURE EXCLUDE ALL SOCIALISTS?

It is still a matter of debate whether a representative body in judging of the eligibility of members can impose qualifications in addition to those appearing in the constitution. The federal constitution reads: "Each House shall be the judge of the elections, returns and qualifications of its own members," and "Each House may . . . with the concurrence of two-thirds expel a member." Similar provisions occur in most state constitutions although the New York constitution omits mention of the power to expel. Under the doctrine of inherent powers this is a prerogative to be exercised by a simple majority. In the lower house of congress well established precedent holds that a member once admitted to a seat cannot be expelled unless for misconduct subsequent to his election or for offenses which did not become known until after his election. This is the power of self protection which would be normally applied when a member is guilty of continued contempt or physical obstruction of proceedings. A person's pre-election qualifications to a seat in congress must be questioned, if at all, before the member is sworn in, and on this question a simple majority has power to act. On the other hand, so distinguished a lawyer as Senator Knox argued forcefully before the senate in the Smoot case that a legislative body had no power at all to add to the constitutional qualification of members but that expulsion by two-thirds vote could occur for any cause which affects a member as such. The two-thirds vote he compared to the unanimous decision required in jury trials, the purpose of both being to throw adequate protection about the accused. This was the theory followed by the senate in 1862 in the famous case of Benjamin Stark, senator-elect from Oregon, whose loyalty to the Union was in doubt. Stark, however, having been admitted to the senate, the motion to expel him failed.

Throughout the Civil War and reconstruction period, the power of congress to exclude regularly elected members on grounds of disloyalty was debated at great length. Numerous representatives from the border states whose loyalty to the north was in doubt appeared for admission. In the Stark case, Senator Harris of New York reported for the judiciary committee as follows: "I do not understand that it is competent for the senate . . . to attempt to punish a man for crime or misbehavior antecedent to his election. If this were so the constitution ought to be amended so as to read that the legislature of a state . . . shall elect . . . a senator subject to the advice and consent of the senate." During this period the majority in congress believed more or less firmly that loyalty to the Union was a qualification for membership in addition to age, residence and citizenship as required by the constitution. The test oath act was passed in 1862 and subsequent action was based on it. However, it appears from the debates that the legality of extra-constitutional qualification was always in doubt and that this was one reason for the third section of the fourteenth amendment. One purpose was to keep out the southern Democrats, and congress did not feel that the doctrine of inherent powers was equal to the task. Furthermore, the cases of members excluded for disloyalty to the Union did not exceed half a dozen. The established doctrine was that unless it could be shown that the member had given aid to the rebellion by overt acts he could not be denied his seat. Of course, numerous members from southern

states who engaged in active warfare against the Union or committed open acts of hostility to the government were expelled. The senate refused, however, to expel Senator Powell of Kentucky, who had publicly urged neutrality for his state and had commended the governor for refusal to furnish troops to the north.

Congress has claimed the right to exclude persons guilty of crime, notably the crimes of bribery and polygamy. The crime must be one, however, which affects a person's capacity to act as a member. Members have also been expelled for bribery, the evidence of which came to light after the oath was administered, but it has been usual for the guilty person to resign and thus end proceedings against him. The recent Berger case involved criminal conviction for disloyalty.

THE TWO MAIN CHARGES

Disregarding certain trivial accusations in the brief against the five Socialists as irrelevant, the material charges in conformity with American precedent exemplified in congressional practice may be boiled down to two. Were the suspended members guilty of disloyalty to the United States or were they guilty of crime, namely of conspiring to overthrow the government by force? It would seem as if the criminal law is adequate to dispose of both charges and that a legislature should not undertake to punish a group or party which cannot be shown to be a criminal conspiracy. The Socialist party falls short of this. Failing to show that the accused are guilty of crime, personal disloyalty must be proved against them; it will not do to accuse a whole party of disloyalty if the members cannot be reached under the espionage law. True, congress during the Civil War held that disloyalty sufficient to disqualify for membership in that body might fall short of treason, yet it must be overt and open and have given aid and comfort to the enemy. And this power to exclude was only claimed at a time of armed rebellion in the midst of actual hostilities. As a mere matter of precedent the action of congress in 1862 cannot be stretched to cover the brief of the judiciary committee of the New York Assembly. That the leading members are not sure of their ground if the accused were tried in the courts is indicated by their repudiation throughout the hearings of the plan to bring criminal charges against them.

ETHICS—OR LAW?

It is the belief of the present writer that the mere legal irresponsibility of the legislature in matters of privilege in no sense destroys its high moral and political responsibility. Representative government is at bottom a question of ethics and as an institution must be shot through with the spirit of common counsel. This involves the recognition of small and at times personally offensive minorities. In their zeal to scourge heretics, legislatures must remember that democracy is a continual concession to heresy. The fact that the legislature in determining the qualification of members is not subject to judicial review does not mean that it is uncontrolled. In determining the rights of members and of constituencies it must adhere to the great and leading principles of judicial fairness; the spirit and intent of the constitution is binding on the legislature as on any department of government. Especially must this be observed since the same body must usually act as both judge and jury. And a distinguished constitutional lawyer has noted that the abuses of power by Parliament in this connection

marked the worst period of its dependence and corruption.

The early precedents permitting an elected body to take issue with the honest will of the electors grew up before the representative nature of Parliament was established. Members of Parliament looked upon themselves as officers of government, as they yet possess legally the plenitude of sovereignty. Strict legal theory in England has never accepted the doctrine that power emanates from the people. There the privilege of electing representatives was a conceded and not an inherent right. The prerogatives of members, therefore, gave them rights against their constituents, as well as against the crown. A member *persona non grata* to the majority might be expelled, which was quite consistent with the close corporation conception of Parliament. Indeed on this ground some members of congress in 1867 favored the expulsion of certain others who, although their loyalty could not be impugned, had opposed the administration during the Civil War. But neither congress nor a state assembly is a club or debating society to pass on the eligibility of members. Burke condemned this tendency in the English Parliament: "If the habit prevails of going beyond the law and superseding the judicature, of carrying offenses real or supposed into legislative bodies who shall establish themselves into courts of criminal equity, all the evils of the Star Chamber are revived." Criminal equity he describes as a monster in jurisprudence and consists in a liberal construction in determining offenses and a discretionary power in punishing them. "The true end and purpose of that House of Parliament which entertains such a jurisdiction will be destroyed by it."

As pointed out by counsel for the Socialists, under the wide jurisdiction claimed as a matter of right by the New York assembly, a strong and determined minority could take advantage of their momentary control of the house when some of the majority were at dinner or out playing poker and upon some fancied charge expel sufficient of the majority to place the minority in command.

But more serious implications have been discovered by Father Ryan, a sturdy opponent of socialism. "I see quite clearly," he writes, "that if the five Socialist representatives are expelled from the New York Assembly on the ground that they belong to and avow loyalty to an organization which the autocratic majority regards as 'inimical to the best interests of the state of New York,' a bigoted majority, in, say, the legislature of Georgia, may use the action as a precedent to keep out of that body regularly elected members who belong to the Catholic church." Religious intolerance survives, and the Jesuit doctrine that the civil power is only the secular arm of the church or the syllabus of errors, issued by the Pope in 1864, forbidding anyone to argue that civil law ought to prevail in a contest between church and state, the publication of most of which was forbidden in France, might still provide the occasion for summoning the aid of the state in opposition to a minority religion. Even the senate committee which reported on Smoot's right to his seat held that his membership in a religious hierarchy that united church and state contrary to the spirit of the constitution was a reason for vacating his seat.

CONCLUSIONS

Our beloved institutions of representative government will not stand tampering with. The alternative to-day is pure republican government or vio-

lence. As shown above, best American precedent permits of no qualifications for membership in a representative body in addition to those stipulated by the constitution, except the tests of loyalty or freedom from crime. During the turbulent days of the Civil War, even this power was in doubt and congress refused to exclude regularly elected members unless their disloyal acts had been overt and open. Mere sympathy with the rebellion or want of active support of the government were not sufficient. In the words of a congressional committee of 1867: "We believe that in our government the right of representation is so sacred that no man who has been duly elected by the legal voters should be refused a seat on grounds of personal disloyalty unless it has been proved that he has been guilty of such open acts of disloyalty that he cannot honestly and truly take the oath." If this is good American doctrine, what about the rights of representatives elected by a party which is but vaguely charged as disloyal? During the hearings before the judiciary committee, Assemblyman Evans, a Democratic member who had campaigned against the Socialists in their home districts, read into the record a dissenting statement which contains some good politics, "The duty and power to disqualify for elective office rests with the people and not with the Assembly. To maintain our form of government we must rely absolutely on the electorate—the majority of the electorate—to send to the assembly men who from our viewpoint are loyal and clean, and we must trust that the majority of the electorate will never fail in this respect. If in that respect the majority of the electorate ever fail, then our government must fail. There is no other alternative." As our president, Mr. Charles E. Hughes, wrote Speaker Sweet, "Is it not clear that the government cannot be saved at the cost of its own principles?"

NOTES AND EVENTS

I. GOVERNMENT AND ADMINISTRATION

Proportional Representation in Canada and Ireland.—The cities of Vancouver and Victoria, British Columbia, have both voted to adopt the Hare system of proportional representation for the election of their councils. Vancouver, which has a population of about 100,000, is now the largest city on the continent to use the proportional system.

The movement for proportional representation is growing in several of the provinces of Canada. In Manitoba it is to be urged for the election of the members of the provincial parliament from Winnipeg. In Alberta Premier Stewart recently said: "You are asking for proportional representation. Before the next election you will have it." In Saskatchewan the speech from the throne indicated that the government would soon introduce a bill providing proportional representation for urban municipal elections.

On January 15 the Hare system of proportional representation was used for the first time generally for Irish local elections, no less than 127 Irish municipalities electing their councils or other "authorities" by the Hare system on that day. Before that time only one Irish city, Sligo, had used the new system.

It seems surprising that any election system whatever could give satisfaction to all parties in Ireland at the present time. Yet apparently the Hare system did just that, as is indicated by passages from newspapers representing the Unionist, the Sinn Fein, and the Nationalist parties.

The Hare system of proportional representation is prescribed in the new home rule bill for Ireland, the text of which was made public in England on February 28. The bill prescribes two parliaments, one for southern Ireland, the other for northern Ireland. Under the scheme of districting provided, the number of members elected proportionally from each district is from three to eight. After either parliament has been in existence for three years, it is to have power, according to the bill, to change the system if it desires to do so.

*

New York Adopts Housing Relief Measures.—Under the spur of public opinion and an emergency message from Governor Smith, the New York legislature has passed a series of eleven laws designed to relieve the housing situation in first-class cities and Westchester county. These measures, which have been approved by the governor, are as follows:

1. Burden of proof that a tenant is objectionable when summary eviction is sought on that ground is shifted to the landlord.

2. Amendment of the so-called Ottinger law so as to provide that where an agreement between landlord and tenant does not specifically mention the duration of the tenancy this shall continue until October 1 following occupancy.

3. Thirty days' notice instead of twenty by tenants intending to move is required where there is a monthly tenancy agreement.

4. In holdover cases, after there has been default in the payment of taxes or assessments, a tenant may remain, providing he deposits the amount of his rent with the judge or clerk of the court through which an eviction warrant has been served.

5. Where a precept is returnable the court may determine the amount of rent due and render judgment for that amount.

6. Where a landlord has increased his rent more than 25 per cent over what it was in the previous year the tenant may set up as a defense to action for payment of rent that it is "unreasonable, unconscionable, unjust and oppressive," but the landlord may recover a "reasonable" amount of rent.

7. Section 230 of the real estate law, under which a landlord may recover double penalty from a tenant holding over without his consent, is repealed.

8. A tenant may make application for a stay up to nine months and the judge in his discretion grant it, provided the tenant deposits the amount of his rent and proves to the satisfaction of the court that he has diligently sought to secure suitable premises for himself and family and has failed through no fault of his own.

9. Practice is prescribed and the provisions of the code in summary proceedings harmonized with the new provisions embodied in the relief bills.

10. The penal law is amended by making it a misdemeanor, punishable by a fine of $1,000 or one year's imprisonment, or both, for a landlord to deny to a tenant the privilege of "natural and normal service," such as heat, water and operation of elevator.

11. The same defense is prescribed in actions for ejectment in the supreme court as has been prescribed for summary proceedings in the municipal courts in rent eviction cases.

✻

Home-Rule Decision by Ohio Supreme Court.—In a mandamus suit brought against the commission of publicity and efficiency by the law director of Toledo, the supreme court of the state, in a unanimous opinion, decided that the state legislature has no control over the purpose for which bonds of a municipality may be issued, and that they may only limit the total amount of indebtedness a city may incur. The opinion resulted from a test suit to determine the city's right to issue bonds against its general credit for the purchase of the street railway system.

While the full text of the decision has not yet been given out, a statement was issued by Chief Justice Nichols giving the gist of the decision. This statement was as follows:

The primary question is whether a municipality, under the constitution and laws of the state, may incur debts through the issuance of bonds or otherwise for the purpose of acquiring a public utility.

By the provisions of section 4 of article 18 of the constitution as amended in 1912, authority is conferred upon any municipality of the state to acquire any public utility the product or service of which is to be supplied to the municipality or its inhabitants.

The provisions of section 51 of article 18 authorizes any municipality which desires to raise money for such purpose to issue mortgage bonds therefor, and it may issue such bonds beyond the general limit of bonded indebtedness prescribed by law, provided such mortgage bonds issued beyond such general limit of bonded indebtedness shall not impose a liability upon the municipality, but shall be secured only upon the property and revenues of such public utility.

The legislature under authority of section 13 of article 18 may pass upon laws to limit the power of municipalities to levy taxes and secure debts, but it cannot thereby deny the right of a municipality to issue bonds for the proposed purpose, that being expressly authorized by constitutional provisions.

Municipalities of the state are empowered by constitutional provisions to acquire any public utility the product or service of which is to be supplied to the municipality or its inhabitants, and they may issue bonds to raise money for such purpose, pledging the general credit of the municipality to their payment within the limitations prescribed by the legislature as to amount of indebtedness for local purposes. No legislative grant of power is essential. The issuance of such bonds may be limited or restricted by legislative act, not as to the purpose, but only as to the amount of indebtedness the municipality may incur.

The decision of the court harmonizes with the intent of the framers of Ohio's constitution in empowering municipalities to acquire, construct, or operate public utilities; but it goes even further than that, and holds that a city may issue general credit bonds for any purpose so long as the total indebtedness is kept within the limit prescribed by the legislature.

✻

Constitutional Revision in New Hampshire.—The recent New Hampshire convention to revise the constitution proved a very conservative body, adopting no measures of radical tendencies, and proposing altogether only seven amendments to the present constitution. These provide (1) authority for the legislature to impose a classified, graduated, and progressive income tax; (2) for removing the present constitutional limitation that no pension shall be granted for more than one year at a time; (3) for strengthening the progressive feature of the present inheritance tax, about which there has been some question; (4) for repealing the present constitutional provision allowing conscientious objectors exemption from military duty; (5) for empowering the governor to veto individual items in appropriation bills, but subjecting such action to the same review of the legislature as in the case of other gubernatorial vetoes; (6) for eliminating the words "rightly grounded on evangelical principles" and "Protestant" from Article VI of the bill of rights providing for the encouragement of public worship of the deity and the right of electing religious teachers; and (7) for a reduction in the membership of the House of Representatives.

The last is regarded generally as the important resolution of the whole seven. The House of Representatives at present has a minimum and a maximum membership of 300 and 325 respectively. If this amendment is adopted the legislature in 1921 shall make a new apportionment, following the town system as at present, but based upon the average number of ballots cast for presidential electors at the two preceding

elections. The present representatives of the large towns and cities will be reduced by the provision that three times the number of electors shall be required to give a town or ward a second or third representative as was required for the first. The representation of the smaller towns will, however, be affected almost as much since more towns are to be placed in the classified list. Classified towns are those having less than 600 population, and each is represented in the legislature the proportionate part of time which its population bears to 600. The purpose underlying the proposal to base representation upon actual voters is to stimulate the cities to greater effort to naturalize and Americanize the foreign population.

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Omaha Acquires Municipal Gas Plant.—Omaha, Nebraska, with a population of about 200,000, is the largest municipality in the United States to try municipal ownership of the gas plant. The question has been under consideration since November, 1907, when a special election was called to submit to the public the question of voting bonds in the amount of $3,500,000. It was defeated, but again in May, 1918, the proposition of acquiring the gas plant by the exercise of eminent domain through a condemnation court was carried. The city of Omaha and the company had appraisals made which were submitted to the condemnation court. In four separate appraisals the values placed upon the property were $3,760,000, $6,281,000, $5,518,000, and $5,570,000. The first of these was made by the city's appraisers; the other three by appraisers representing the company. These figures represent the depreciated values of the property and include going value.

Early in February, 1920, the condemnation court rendered a decision awarding the gas company $4,500,000 as the value of the property, and on March 20, the city commissioners voted to take over the gas works and its operation at this price. The city commissioners also voted $1,000,000 as working capital for improvements and extensions.

The gas plant will be operated by the municipality under a bi-partisan board of directors with a manager in charge of the property. The same board that now operates the municipal water plant will operate the gas plant. It is anticipated that under the city management the rates will not be increased as has been recently the case with many privately owned and operated gas plants.

This step in municipal ownership is significant in the light of the fact that Omaha already owns and operates its water plant and ice plant.

✻

Proposed Remedies for the Dearth of Jurors.—The committee on courts of the City Club of New York has made a study of the difficulty of obtaining well-qualified jurors in New York county—a difficulty experienced in many places—and has prepared a series of remedial bills which have been approved by the trustees of the club and introduced in the legislature.

These measures may be briefly summarized thus:

(1) Abolishing jury duty exemptions of special jurors.

(2) Abolishing exemptions from duty of election officers.

(3) Abolishing the exemptions from jury duty of clergymen, veterinary surgeons, sheriff's jurors, and volunteer firemen, and reducing the exemptions of members of the National Guard to five years after honorable discharge.

(4) Reducing the period of yearly residence required in New York county to qualify as jurors.

✻

Kansas City Considers "Detroit Plan" of "Ribbon" Wards.—With the avowed purpose of destroying boss domination in Kansas City, Missouri, former Mayor Henry M. Beardsley has proposed the adoption of the "Detroit plan" of ribbon wards, under which the city would be divided into a number of wards (sixteen, as at present) running with substantially parallel lines from the north to the south boundary lines, and containing as nearly as may be the same voting population in each ward.

It is not presumed that a mere change of ward boundaries will correct political evils; but changes can be made that will be exceedingly helpful toward that end. The proposed plan, it is claimed, is of such a kind, because it would break up the wards in which the political machine has been able most securely to develop an organization for controlling elections through fraudulent registration and irregular conduct in receiving and counting the ballots. Under existing law, residents of any ward may serve as election officers in another precinct in the

same ward, so that by cutting the wards in long strips, each to include a part of the better residential district as well as a part of the business section, a better choice of election officers would be possible for all the precincts of every ward.

This plan is to be submitted to every civic organization in the city for its approval, and finally submitted to candidates for council for their approval or rejection. It has received the endorsement of the Citizen's League.

II. JUDICIAL DECISIONS

Gas Rates.—In the case of the *Southwestern Gas and Electric Company* v. *City of Shreveport*[1] the Circuit Court of Appeals held that the city was not estopped from maintaining a suit to enjoin the charging of increased rates by the gas company, even though it took no action upon learning of the intended increase, but waited until the increased rates had been put into effect. The court held also that where a company held two franchises, one acquired by assignment, it is bound to charge no more than the lowest maximum rate provided in either franchise.

Another interesting gas rate case is that of *Selkirk* v. *Sioux City Gas & Electric Company*,[2] wherein the supreme court of Iowa decided that under a state law, empowering a city to regulate gas rates, Sioux City had a right to pass an ordinance fixing such rates and repealing all ordinances fixing gas rates previously passed, notwithstanding an ordinance in force at the time fixed such rates and provided that upon acceptance thereof by the gas company it should become a binding contract between the city and the gas company.

Removal of a Public Officer.—In an action against a city for salary by its marshall, removed from office by the mayor, the evidence of the marshall as to his conversation with the mayor tended to show that he was removed for political reasons, and not for incompetency, as stated by the charges filed by the mayor in accordance with the charter. The supreme court of Texas, *City of Antonio* v. *Newnam*,[3] held this was sufficient to sustain a verdict for the marshall. The mayor said "I fired you to put in my own people who helped me to be elected."

Newsstands as Nuisances.—Although the Buffalo city commission had authorized street-corner newsstands by law, the supreme court of Erie county granted a writ of mandamus against the commission and street commissioner to remove these newsstands on the ground that they were nuisances as a matter of law, being permanent, unreasonable, and unnecessary encroachments upon the public street. This suit was brought by a taxpayer, and it is doubtless the only way by which such street obstructions can be eliminated.

Wheeling Charter.—The supreme court of appeals of West Virginia has recently upheld the validity of the greater Wheeling charter, and declared that the resolution of the city council, and the notice given by it of the election to take in a number of suburban towns as parts of the city, was sufficient to make legal the voting of the people on the proposition, both in the city proper and in the city suburbs.

Toledo Car Lines.—Advocates of municipal ownership of public utilities claim to have won a great victory, when the Ohio supreme court recently held that a city may incur debt through the issuance of bonds or otherwise for the purpose of acquiring street railway systems within the city. Chief Justice Nichols gave the following as the court's line of reasoning: "Municipalities of the state are empowered by constitutional provisions to acquire any public utility, the product or service of which is to be supplied to the municipality or its inhabitants, and they may issue bonds to raise money for such purpose, pledging the general credit of the municipality to their payment within the limits prescribed by the legislature as to the amount of indebtedness for local purposes. No legislative grant of power is essential. The issuance of such bonds may be limited or restricted by legislative act, not as to the purpose, but only as to the amount of indebtedness the municipality may incur."

Street Improvements.—The validity of a number of ordinances for the improvement of Columbus streets was tested recently in the Franklin County courts. The improvements

[1] 261 Fed. 771.
[2] 176 N. W. 301.
[3] 218 S. W. 128.

were made without petition of property owners, and the ordinances were passed by a vote of less than three-fourths of the city council. The main point involved in the case was whether a city charter, or the general state law with reference to taxation, controls the city council in the improvement of public streets. The court held that notwithstanding the home-rule section of the state constitution, the general state laws upon taxation predominate, and that no city can escape these laws by adopting a charter of different provisions. In this case the council adopted the improving ordinance by a vote of five of its seven members. The state law requires that at least three-fourths of the council shall vote for such a measure before it can be adopted. In view of this fact the court held against the ordinance.

✻

Zoning.—The supreme court of Minnesota in the case of *Twin City Building & Investment Company* v. *Houghton* recently decided that apartment houses may be barred from residential districts created by cities of the first class in this state under eminent domain. Justice Holt said: "It is time that courts recognized the esthetic as a factor in life. Beauty and fitness enhance values in public and private structures. But it is not sufficient that the building is fit and proper, standing alone; it should also fit in with surrounding structures to some degree. People are beginning to realize this more than before, and are calling for city planning by which the individual homes may be segregated not only from industrial and mercantile districts, but also from the districts devoted to hotels and apartments. The act in question responds to this call, and should be deemed to provide for a taking for a public purpose."

ROBERT E. TRACY.

III. MISCELLANEOUS

Municipal Savings Bank Saves Money for City.—The "municipal savings bank" of Saint Paul (Minnesota), according to a recent statement had deposits totaling $3,635,000 on July 1, 1919, after six years of operation. The "bank" is operated by one clerk. It accepts deposits and issues 4 per cent certificates redeemable on demand and with interest, whether the money has been on deposit a day or a year. For the investment of its deposits the "bank" buys tax certificates and bonds of the city, particularly at times when the city would have to pay high rates for loans through commercial channels. Within the past twelve months the "city bank" has taken $100,000 of 4½ per cent 30-year water bonds, $600,000 of 4½ per cent school bonds, and $750,000 of 5 per cent tax levy certificates, which, it is stated, were not commercially marketable at those rates. It is reported that the water-bond transaction alone will save the city $105,000 of interest charges.

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Municipal Banks in England.—In the early part of 1916 the corporation of Birmingham, England, at the instigation of the lord mayor, promoted a bill in parliament to establish a municipal savings bank. The measure met with considerable opposition from the banking world, and eventually the proposal had to be abandoned. This was not to the liking of Birmingham, and six months later it succeeded in persuading the government to bring in a measure which became law, and was known as the municipal savings banks (war loan investment) act, 1916. This measure was very unsatisfactory, being full of limitations and restrictions. According to a statement made by the manager of the bank, its privileges were restricted to one class of depositor, namely, employed persons; the savings could only be made through the employer; no savings beyond £200 were permitted; the bank could only run for three months after the war; the money had to be invested through the national debt commissioners; and no sum could be withdrawn over £1 without seven days' notice. Conditions such as these are almost enough to break the heart of any public authority or person interested in thrift.

Despite all these drawbacks the scheme was worked in Birmingham with such success that 35,000 depositors were enrolled, and in three years £350,000 were collected—an achievement the corporation is proud of.

With the signing of the armistice the question arose as to whether all this money should be paid out to depositors, or whether steps should be taken to build up a permanent bank. Eventually the corporation decided to promote a bill for the setting up of a permanent bank with wider powers. Parliamentary assent was given on August 16, 1919, and on September 1, 1919, this bank

opened its doors to the public, with a head office at the council house and seventeen branches in different parts of the city, some open daily and others on certain evenings. Eight thousand new depositors were enrolled during the first ninety days, and the rate of progress is being maintained.

There are two distinct departments in the bank, a savings bank department and a house purchase department. The former is conducted on lines very similar to trustee savings banks and the Yorkshire penny bank. Any sum from 1d. upwards is accepted. Withdrawals up to £30 can be effected at the head office without notice, and at any branch up to £5. The house purchase department follows very closely the procedure of a building society. The advances are limited to depositors, to houses actually built, and to houses within the city. The extent of the advance which can be made is 80 per cent of the market value, and the repayments may be spread over a period of twenty years. In the first three months, upwards of 200 applications were received.

The Birmingham municipal bank is governed by a committee of the council, upon which labor is prominently represented. Its success has led to agitation in Manchester, Bradford, and other cities for the establishment of similar institutions.

✻

One-Man Street Cars Barred in Nashville.—Opposition of labor unions in Nashville, Tennessee, to the operation of one-man street cars induced the city commission to prohibit the use of such cars by the Nashville railway and light company. The measure was passed by a vote of three to two.

Greater economy in operation was the claim made for the one-man system by the company, which predicted that continuance of the two-man cars would force it into bankruptcy. A number of citizens appeared before the commission in favor of the one-man cars, and testified that service was improved by the new cars. Representatives of the labor unions contended that use of the cars was unfair to the employes.

✻

National Information Bureau Investigates Organizations Appealing for Funds.—The national information bureau, organized by charitable contributors and leaders in philanthropic work to investigate all national appeals and indorse those which meet certain standards of responsibility and efficiency, has issued an approved list of 123 national philanthropic and civic agencies appealing for a total of $160,000,000. Adding $176,463,473 for religious organizations which have complied with the standards of the bureau, and $100,000,000 asked for by 34 colleges and universities, makes it apparent that hardly less than $450,000,000 will be needed to pay the total bill for charity, social betterment, and educational purposes in 1920, without taking into account local charities, local church expenses, and taxation for public institutions.

The bureau was compelled to refuse indorsement in more than half its investigations.

CITY MANAGER MOVEMENT

PROGRESS OF MANAGER PLAN IN ONE HUNDRED EIGHTY-FIVE CITIES

BY HARRISON GRAY OTIS[1]

More than 3,100,000 American citizens are living to-day in towns and cities that have adopted the city-manager plan of government. Until six years ago there were but a dozen small towns in the whole country that had ventured into the limelight by authorizing their councils to appoint the chief administrative officer instead of trusting the ballot box to produce executive efficiency.

To-day there are 180 municipalities in the United States operating under, or pledged to, some type of the manager plan. Of these, 114 have created the position of manager by charter, charter amendment or adoption of optional state laws by popular referendum. Nine more have secured modified manager plans by similar means, while the remaining 57 have officers called managers whose positions and duties are established by local ordinance only. Fifty of these latter are towns of less than 10,000 population.

The record of the growth of the manager plan by years and types follows:

Year in Effect	Approved Charter	Modified Charter	Ordinance Only	Total
1908	—	—	1	1
1912	—	—	2	2
1913	5	—	4	9
1914	12	3	5	20
1915	12	3	6	21
1916	14	1	5	20
1917	12	1	3	16
1918	20	1	11	32
1919	20	—	10	30
1920 (4 mo.)	19	—	10	29
Totals	114	9	57	180

[1] Secretary, City Managers' Association.

Incidentally, it is worth noting that 26 other towns have tried and discontinued the ordinance-created manager plan. To date, no report is at hand of any city having reverted to its former plan of government after having adopted the manager idea by vote of its citizens. Five Canadian towns employ managers.

Classified as to size, the population figures being estimates:

Plan	Over 50,000	20,000 to 50,000	10,000 to 20,000	5,000 to 10,000	Under 5,000	Total
Charter	13	22	24	34	21	114
Mod. Charter	0	1	3	1	4	9
Ordinance	2	0	5	22	28	57
Totals	15	23	29	57	53	180

ACHIEVEMENT REPORTS

For the past three years the city managers' association has made an effort to secure definite, concise reports as to how the manager plan is working out in the various cities, what achievements are to its credit, in what way it has permitted improved conditions, how the average citizen looks upon the innovation.

We here present the first of a series of articles which will comprise a report upon the success of the plan. These stories have been gleaned from letters from managers, mayors, chamber of commerce secretaries and business men, from annual city reports, from the press and from interviews. The subject of the first installment is

Dixie—Birthplace of the City-Manager Plan. The subjects of subsequent chapters will be

City Managers in and around Ohio.
Michigan Manager Municipalities.
Texas and Oklahoma Turn to Manager Plan.
Pacific Coast Cities under Manager Government.
Borough, Town and City Managers "Down East."
Reports from Managers in the Prairie States.
Progress of Manager Movement in Rocky Mountain Region.

I. DIXIE, BIRTHPLACE OF THE CITY MANAGER IDEA

The South has been given first place in discussing the progress of the city-manager movement for several reasons: To Dixie belongs the distinction of appointing the first city manager, of putting into effect the first three commission-manager charters, of having both the largest and smallest cities now operating under this plan. It boasts the state which is credited with having the largest percentage of its population pledged to the plan. Among Dixie managers are the first man to enter the new profession and the one who holds the record of longest continued service in a single city. It was a southern city of 12,000 which adopted its commission-manager charter by a record ratio of 54 to 1, and a neighboring town of 11,000 claims the limelight by having had 522 applicants for the position of city manager.

VIRGINIA

Virginia leads the South. It inaugurated the manager idea by the appointment of Charles E. Ashburner as general manager of Staunton in January, 1908. Mr. Ashburner is now manager at Norfolk, a city whose population is close to 200,000.

At this time, Virginia has 17 towns and cities pledged to the manager plan. Of these 9 have created the position of manager by adoption of the optional law of 1914 or by special charter. The other 8 have passed ordinances creating the office of manager. One fifth of Virginia's entire population live in city-manager cities. The cities of Petersburg, Newport News, Lynchburg, and Hampton have voted for the new plan and managers will be appointed during this year.

Progress Supercedes Politics at Norfolk

NORFOLK. Population, 200,000. Commission-manager charter effective September, 1918. Charles E. Ashburner, manager, salary, $12,000.

Few cities have faced more serious problems of readjustment than has Norfolk. The population has more than doubled and all branches of municipal activities have been taxed to the utmost, yet the record to the credit of the new plan is an enviable one. Among the high spots are: A deficit reduction of $200,000; $1,500,000 added public improvements; best paid fire and police departments in the United States, and fire department on two-platoon system; juvenile court established, fourteen playgrounds provided, and teachers' salaries increased. Surveys have been completed for a $3,000,000 addition to the water works system.

The paving of 43 streets has been authorized and many of the contracts completed. Through co-operation between the city planning commission and the citizens, a street extension project which would ordinarily have cost the city $250,000 has been completed at an expense of $20,000. By plans

now under way the city will acquire approximately 50 acres of land fronting on deep water valued at $750,000. The cost of this improvement will not exceed $250,000 leaving a net gain of $500,000 and requiring only the construction of a pier to make the whole property available for shipping purposes.

Vying with the material gains noted have been the advances in public welfare and recreation fields. All branches of the welfare department have been unified, a city hospital established, visiting nurses employed, free medical and dental clinics opened and a striking reduction in infant mortality brought about. With the increased playground facilities, the attendance has quadrupled and the benefits enjoyed by grown-ups as well as children. A municipal tennis tournament proved most successful.

A Norfolk editorial sums up the situation: "Having outgrown her old unsteady form of government, Norfolk discarded it and evolved a better one. At last it seems that in one American city at least the playing of politics in municipal government has been abandoned."

Portsmouth Saves $44,000 First Year

PORTSMOUTH. Population, 80,000. Commission-manager charter effective January, 1917. W. B. Bates appointed manager August, 1917; present salary, $5,000.

During the first year, under the new plan, the city saved $44,000 notwithstanding war conditions. During the second year, with expenses enormously increased, the city about broke even. Annexation of territory increased the population by 15,000 and added property values to the amount of $6,000,000. The high points of achievement are reported as follows:

The city has purchased for $2,700,000 a $3,000,000 water system which supplies three cities, and has contracted for extensions and enlargements amounting to $1,800,000; established a $10,000 asphalt plant; equipped the street cleaning, trash and garbage department at cost of $20,000.

By terms of a lease to the government of the ferry owned by the city and county, the equipment has been doubled and the ultimate income will be greatly increased. A much needed city cemetery has been provided by the purchase of a 113-acre plot.

A complete building code has been enacted and a building inspector appointed to enforce it. Plans to purchase the gas system are being considered. A memorial community house may be erected and the establishment of a civic center to cost approximately $500,000 has been recommended.

Old System Inadequate

ROANOKE. Population, 47,350. Commission-manager charter effective September, 1918. William P. Hunter, manager; salary, $4,800.

A letter from the secretary of the Roanoke chamber of commerce contains the following significant paragraph: "We feel that Roanoke is particularly fortunate in that this change was made in 1918, and that our affairs have for the last year been in the hands of five successful, earnest business men. In addition to the tremendous increase in the cost of operation which the city has had to face along with all other business enterprises, there has been the loss of revenue because of prohibition and certain taxes upon railroad rolling stock that have been diverted. In spite of all this, the city has progressed and has kept within its financial limits.

"Considerable public work has been done, new territory has been annexed and a comprehensive business-like budget for the coming year has been

adopted. The council of five meets each Saturday afternoon at 3 o'clock in public session and any citizen can get respectful hearing and an immediate answer. It is true that time honored political traditions have been violated in the change here, but it is our opinion that our people generally recognize the wisdom of their action.

"We have been careful always and wish to have it understood in this communication, that there has been no criticism intended of the men composing the old form of government in Roanoke. There has been no suspicion of misappropriation of funds or anything of that sort, the whole matter hinging purely upon the inability of the old system to care for the needs of a community such as this."

A Program of Improvements

CHARLOTTESVILLE. Population, 10,688. Position provided for by ordinances of August, 1913, and January, 1917. Shelton S. Fife, the third manager, was appointed September, 1918; salary, $2,400.

The manager plan has been hampered at Charlottesville by a lack of a proper charter yet concentrating department control in a single office has promoted increased service. During the past year the water, gas and sewer mains have been considerably extended, a concrete mixing plant has been purchased and the city is constructing concrete pavements as rapidly as possible.

Detailed plans for a comprehensive program of improvements have been worked out and a million dollar bond issue will be submitted to the voters in April. The proposed improvements include paving, water, gas and sewer extensions, construction of a municipal memorial building and purchase of motor fire apparatus.

Twelve Years of Success at Staunton

STAUNTON. Population, 12,000. Staunton originated the idea of employing a city administrator by putting into effect an ordinance creating the position of general manager, January, 1908. The first manager, Charles E. Ashburner, was succeeded January, 1911, by S. D. Holsinger. Mr. Holsinger's salary is $2,000.

By the merging of offices and making of advantageous contracts, the saving has more than doubled the amount of salary and expenses of the manager's office. Staunton has found the manager plan so good an investment that there is a strong sentiment at present to improve it by adopting a standard commission-manager charter. Among the advance steps taken may be noted:

- Modern accounting methods and budget system;
- Centralized purchasing;
- Improved procedure of levying and collecting assessments for sewer and paving work;
- Metering of water supply;
- Preparation of sewer, water, and light maps;
- More efficient street paving methods;
- Increased sanitation and systematic garbage removal;
- Complete motorization of fire department;
- Increased beautification and use of public park;
- Erection of modern street signs;
- Systematic renumbering of buildings and removal of wooden business signs and stationary awnings.

From local reports, it is evident that "the manager idea is permanently established and its success universally conceded."

Amendment Precedes New Charter

BRISTOL. Population, 8,500. City-manager plan provided by charter

amendment effective September, 1919. R. W. Rigsby, manager; salary, $3,000.

Accomplishments under the new plan during the brief period of its operation have been hampered by meager appropriations made by the outgoing council. Perhaps the greatest achievement of the new administration has been the drafting of a complete modern charter to replace the patched-up machinery now in use. This charter will be submitted to the voters soon.

A detailed city map has been completed as a preliminary to a comprehensive city plan. This has been a big undertaking as the city departments have been practically destitute of accurate records. Plans are now in progress for complete sewer and water development. A modern accounting department has been installed and purchasing centralized. The progress being made is meeting with strong popular approval.

A Million Dollar Sewage Disposal Plant

WINCHESTER. Population, 6,883. Position of manager created by ordinance May, 1916. Thomas J. Trier, the second manager, succeeded A. M. Field, September, 1918; salary, $2,000.

A recent letter from Winchester advises that the manager form of government is very satisfactory to the public and that there has been a movement on foot to adopt a standard commission-manager charter.

During the past year the city has opened up a stone quarry, which will mean a saving of hundreds of dollars annually. A million dollar sewage disposal plant is nearing completion. The projects now being worked out include the extension of the city limits, survey for a soft water supply, installation of municipal light plant in combination with present water plant and a general extension of sewer and street work.

Another Good Year at Farmville

FARMVILLE. Population, 4,000. Position of superintendent created by ordinance September, 1915. Leslie Fogus, the second superintendent, was appointed September, 1917; salary, $1,400.

The year 1919 has increased the popularity of the manager plan in Farmville because of the many improvements made possible. During the year the city has constructed 5,000 square yards of concrete paving and three concrete bridges besides building three-fourths of a mile of macadam roadway. Water mains have been extended 3,000 feet, sewer lines 500 feet and electric service furnished to Hampden College, a distance of eight miles.

Other Virginia Cities

SUFFOLK. Population, 8,000. Adopted the city-manager plan by charter September, 1919. Richard H. Brinkley, former city engineer at Suffolk, was appointed manager in October; salary, $3,000.

WARRENTON. Population, 3,000. Has created the position of manager by ordinance and appointed L. M. Clarkson, March, 1920; salary, $1,800.

BLACKSTONE. Population, 2,000. Provided for the position of general manager by a charter amendment which became effective June 1, 1914. R. B. Stone serves as treasurer, clerk, and general manager; salary, $1,500.

NEWPORT NEWS, population, 37,500; LYNCHBURG, population, 35,000; PETERSBURG, population 25,000; HAMPTON, population 8,000 have all adopted commission-manager charters which go into effect during 1920.